

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Adak Eagle Enterprises, LLC and)	WC Docket No. 10-90
Windy City Cellular, LLC)	
)	WT Docket No. 10-208
Petitions for Waiver of Certain High-Cost)	
Universal Service Rules)	

**OPPOSITION OF GENERAL COMMUNICATION, INC.
TO ADAK EAGLE ENTERPRISES' AND WINDY CITY CELLULAR'S
APPLICATION FOR REVIEW AND PETITION FOR RECONSIDERATION**

General Communication, Inc. ("GCI") hereby opposes the Application for Review and Petition for Reconsideration filed by Adak Eagle Enterprises, LLC ("AEE") and its affiliate, Windy City Cellular, LLC ("Windy City").¹ The Bureaus, in their July 15, 2013 Order,² correctly rejected AEE's and Windy City's requests for waiver of the \$250 per-line per-month cap on high-cost support. The Bureaus properly concluded that neither AEE nor Windy City had demonstrated that it was necessary for high-cost support greater than \$250 per line per month to be distributed to either of them "in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative."³ As is undisputed, GCI provides terrestrial

¹ See Application for Review of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC at i, WC Docket No. 10-90 and WT Docket No. 10-208 (filed August 14, 2013) ("Application for Review"); Petition for Reconsideration of Adak Eagle Enterprises, LLC and Windy City Cellular, LLC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed August 14, 2013).

² *Adak Eagle Enterprises LLC and Windy City Cellular LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order, WC Docket No. 10-90 and WT Docket No. 10-208, DA 13-1578 (2013) ("AEE/Windy City Waiver Order").

³ *Connect America Fund; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Lifeline and Link-Up; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; A National Broadband Plan for Our Future; Universal Service Reform – Mobility Fund*,

wireless voice service with coverage to all but approximately 10 households on Adak Island,⁴ receiving only support within the \$250 per-line per-month cap as further reduced by the overall cap on Remote Alaska CETC support. Nothing AEE nor Windy City submitted or now submits shows that the incremental costs of covering those approximately 10 households or uninhabited areas justify the incremental support requested. Moreover, the support requested by AEE is not necessary to prevent consumers from “suffer[ing] loss of [broadband] services with no alternative” or to protect Adak Island consumers from paying more than “reasonably comparable rates to urban consumers.”⁵

In its Application for Review, AEE/Windy City incorrectly asserts that the Bureaus relied on a “pinky promise” from GCI to cover areas on Adak Island that GCI does not already serve.⁶ That argument ignores the plain language of Section 214(e)(3), which states:

If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services . . . , or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.⁷

Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,840 ¶ 540 (2011) (“*USF/ICC Transformation Order*”).

⁴ *AEE/Windy City Waiver Order* at 17 ¶ 40.

⁵ *A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund*, Fifth Order on Reconsideration, FCC 12-137, 27 FCC Rcd. 14,549, 14,557 ¶ 21 (2012) (“*Fifth Order on Reconsideration*”).

⁶ Application for Review at i, 4-6.

⁷ 47 U.S.C. § 214(e)(3) (1997).

In the worst case scenario, in which AEE and Windy City cease operations entirely, the Commission and the Regulatory Commission of Alaska have the statutory authority to compel GCI to expand its coverage. With respect to the amount of support necessary to ensure continued coverage, GCI stated, “[A]t support levels as generated under the Remote Alaska high cost support mechanism or other applicable legacy mechanism and subject to the Commission’s \$3000 per year cap, [GCI] stands ready to ensure that voice and broadband services continue on Adak Island in the event that AEE and/or Windy City cease providing service.”⁸ Moreover, the broadband service that GCI committed to deploy has a maximum advertised speed and included usage that exceeds AEE’s residential broadband service, at a much lower rate.⁹

The Commission was explicit in the *USF/ICC Transformation Order* with respect to the limited circumstances under which it would grant a waiver: “We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.”¹⁰ For nearly all of Adak Island

⁸ Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, (filed May 30, 2013). GCI made clear that this assumed continuation of current forms of high cost support, and was not contemplating a dramatic restructuring of support, as could occur in implementing Mobility Fund Phase 2 and Tribal Mobility Fund Phase 2. *See id.*; *see also* Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, n.1 (filed May 24, 2013) (“GCI May 24, 2013 Ex Parte”). GCI stated that it would provide broadband through a wireless broadband service similar to what it offers in Dutch Harbor. GCI May 24, 2013 Ex Parte at 1. Although GCI stated it could replace necessary links to cell sites, school, health clinic, and other enterprise users with microwave facilities, and although GCI committed to continuing to provide voice service, it did not commit to providing “wireline” service.

⁹ *See* Comments of General Communication, Inc., at 3 & n.4, WC Docket No. 10-90 and WT Docket No. 10-208 (filed July 2, 2012); *see also* GCI May 24, 2013 Ex Parte, at 1.

¹⁰ *USF/ICC Transformation Order* ¶ 540.

households, GCI's presence already makes terrestrial voice services available. Although AEE/Windy City now speculates in its Application for Review that voice services might not be extended to those few households not already covered prior to a hypothesized shut down,¹¹ the possible need for a limited service extension hardly justifies the amount or duration of AEE/Windy City's requested waiver (including as reflected in its Petition for Reconsideration). In reality, AEE and Windy City seek large amounts of support and lengthy waivers because they are small, subscale operations, not because their coverage area is larger (almost exclusively in uninhabited areas) than GCI's. The *USF/ICC Transformation Order* does not sanction a waiver based on the desire to support a small, subscale ETC in the face of a more efficient competitor—and, contrary to AEE/Windy City suggestion,¹² it would not be consistent with competitive neutrality for the Commission to do so here.

Nor did the Bureaus ignore the potential for a default on AEE's Rural Utility Service loans, as AEE/Windy City asserts.¹³ As the Bureaus noted in n.72 of the *AEE/Windy City Waiver Order*, the amount of USF support sought exceeded the outstanding amount of the RUS loans. AEE/Windy City never proposed a waiver limited to an additional amount to repay the RUS loans, nor does it do so now. Thus, the RUS loans do not and cannot justify the amount and extent of the waiver that AEE/Windy City seeks.

In desperation, AEE/Windy City slings more mud at GCI, all of which is wrong and irrelevant to whether the incremental support AEE/Windy City seeks is necessary to ensure the continued provision of terrestrial voice service on Adak Island.

¹¹ See Application for Review at 6.

¹² See *id.* at 11-13.

¹³ See *id.* at 8.

First, GCI provides access to emergency services on Adak Island, including when its subscribers dial “911.” AEE/Windy City is *not* the only 911 provider on Adak Island. GCI currently routes its wireless 911 calls to the PSAP via AEE. However, if AEE ceased to be able to perform that function, GCI could directly route these 911 calls to the PSAP.

Second, as GCI has made clear, it does not include in its high-cost line counts any lines that have no usage within the subject quarter.¹⁴ Thus, no matter how many lines a customer subscribes to as a result of a promotion, if the subscriber does not use the line, GCI does not seek high-cost universal service support for that line. There is no merit to AEE/Windy City’s implicit suggestion that GCI can provide service within the \$3000 per-line annual limit because of support to unused lines. And the Commission has never imposed a “one-per-household” or “one-per-individual” rule with respect to high-cost support.¹⁵

Third, with respect to service quality, AEE/Windy City’s allegations have been disproven in the marketplace. If GCI’s service quality were as bad as AEE/Windy City alleges, GCI would have no subscribers on Adak Island with any usage. In terms of the extent of coverage, the drive test results in the record were those performed by AEE/Windy City themselves.

The Bureaus made a tough call, but the right call. And nothing presented in the Petition for Reconsideration should alter the result. USF support under the *USF/ICC Transformation Order* is a scarce resource. As GCI noted in its August 29, 2012 ex parte, the amount of support that AEE/Windy City seeks to maintain service—when GCI would provide voice service for less than \$3000 per line support per year—could better be deployed to support mobile wireless in

¹⁴ See GCI May 24, 2013 Ex Parte at 2.

¹⁵ In fact, Congress has consistently precluded the Commission from implementing a system of “primary line” high-cost support, as was once proposed by the Federal-State Joint Board on Universal Service. See *e.g.* Consolidated Appropriations Act, Pub. L. No. 112-74, § 511, 125 Stat. 786, 909 (2011).

Alaska villages that have no mobile wireless service today.¹⁶ The Commission should deny AEE/Windy City's Application for Review, and the Bureaus should deny AEE/Windy City's Petition for Reconsideration.

Respectfully submitted,



Chris Nierman
GENERAL COMMUNICATION, INC.
1350 I Street, N.W., Suite 1260
Washington, D.C. 20005
(202) 457-8815

John T. Nakahata
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for General Communication, Inc.

August 30, 2013

¹⁶ See Letter from John T. Nakahata, Counsel to GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 8 (filed August 29, 2012).

CERTIFICATE OF SERVICE

I, Ezra Dunkle-Polier, hereby certify that on this 30th day of August 2013, I served a copy of the foregoing Opposition to Petitions for Reconsideration by electronic mail and first-class U.S. mail, postage prepaid, on the following parties:

Monica Desai
Patton Boggs LLP
Counsel
Adak Eagle Enterprises, LLC
Windy City Cellular, LLC
2550 M Street, NW
Washington, DC 20037

Shannon M. Heim
Elizabeth Gray Nuñez
Counsel for the Alaska Rural Coalition
Dorsey & Whitney LLP
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501
(907) 276-4557

Michael Romano
Senior Vice President—Policy
Jill Canfield
Director—Legal & Industry
Assistant General Counsel
NTCA—The Rural Broadband Association
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
703-351-2000


Ezra Dunkle-Polier